

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of

Mobile Relay Associates

Licensee of Station WPPF233

La Crescenta, CA

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File No.: EB-06-LA-283

NAL/Acct. No.: 200732900006

FRN: 0001532027

FORFEITURE ORDER

Adopted: September 25, 2007

Released: September 27, 2007

By the Regional Director, Western Region, Enforcement Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of three thousand, two hundred dollars (\$3,200) to Mobile Relay Associates (“MRA”), licensee of Private Land Mobile Radio Services station WPPF233, in La Crescenta, California, for willful and repeated violation of Section 1.903(a) of the Commission's Rules (“Rules”).¹ On March 1, 2007, the Enforcement Bureau's Los Angeles Office issued a *Notice of Apparent Liability for Forfeiture* (“NAL”) in the amount of \$4,000 to MRA after determining that MRA was operating WPF233 with an effective radiated power (“ERP”) above the limit stated on the license, thereby, failing to use and operate the station only in accordance with the rules.³ In this *Order*, we consider MRA's arguments that its overpower operation was inadvertent, that it took action to bring the station into compliance immediately after the Los Angeles Office's inspection, and that it has a history of compliance with the Commission's Rules.

II. BACKGROUND

2. On October 3, 2006, the Enforcement Bureau's Los Angeles Office received a complaint of interference from a licensee operating on the frequency 150.875 MHz in the Los Angeles, California, area. The complainant stated that a signal on 150.8825 MHz was the source of the interference.

3. The Commission's Universal Licensing System database lists MRA as the only entity authorized to operate on 150.8825 MHz in Los Angeles County. The license, under call sign WPPF233, authorized a base station on Mt. Lukens, La Crescenta, California, to operate with an ERP of 9 watts.

4. On October 11, 2006, a Los Angeles agent monitored the signal on 150.8825 MHz from the Los Angeles Office and measured the signal level on the frequency as -57 dBm.

5. On October 16, 2006, the agent again monitored the signal on 150.8825 MHz from the Los Angeles Office and measured the signal level as -57 dBm. Later on that day, the Los Angeles agent,

¹ 47 C.F.R. § 1.903(a).

² 47 C.F.R. § 1.907 defines ERP as the product of the power supplied to the antenna multiplied by the gain of the antenna referenced to an isotropic antenna.

³ *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200732900006 (Enf. Bur., Western Region, Los Angeles Office, released March 1, 2007).

using a mobile direction finding vehicle, located the source of the signal on 150.8825 MHz emanating from Mt. Lukens. The agent then contacted MRA. The agent informed an MRA representative that an interference complaint had been received, and that WPPF233's station on Mt. Lukens on 150.8825 MHz was allegedly the source of the interference. The agent informed the MRA representative that the station license limited the ERP to 9 watts.

6. On October 17, 2006, Los Angeles agents again monitored the signal on 150.8825 MHz from the Los Angeles Office and measured the signal level as -57 dBm. The agents then met an MRA representative on Mt. Lukens and inspected WPPF233's station on 150.8825 MHz. The agents again measured the signal and calculated WPPF233's ERP to be 184 watts.⁴ During the inspection, the MRA representative reduced the ERP to 15 watts, and informed the agents that the transmitter's power could not be lowered any further. The MRA representative informed the agents that in the near future, an attenuator would be installed to reduce the ERP to 9 watts. Over-the-air measurements on the 150.8825 MHz taken by Los Angeles agents at the Los Angeles Office corroborated the drop in ERP after the inspection on October 17, 2006, with the 150.8825 MHz signal measured at -67 dBm.

7. On October 25, 2006, an MRA representative called the Los Angeles Office and stated that the attenuator had been installed, and that the station was operating with 9 watts ERP. Over-the-air measurements on 150.8825 MHz taken by Los Angeles agents at the Los Angeles Office corroborated the further drop in ERP on October 25, 2006, resulting in a signal level of -70 dBm on 150.8825 MHz.

8. On March 1, 2007, the Los Angeles Office issued a *NAL* in the amount of \$4,000 to MRA. In the *NAL*, the Los Angeles Office found that MRA apparently willfully and repeatedly violated Section 1.903(a) of the Rules by operating WPPF233 with an effective radiated power ("ERP") above the limit stated on the license, thereby, failing to use and operate the station only in accordance with the rules. MRA filed a response to the *NAL* on April 2, 2007 ("*Response*"). In its *Response*, MRA argues that its overpower operation was inadvertent, that it took action to bring the station into compliance immediately after the Los Angeles Office's inspection, and that it has a history of compliance with the Commission's Rules.

III. DISCUSSION

9. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Act,⁵ Section 1.80 of the Rules,⁶ and *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*.⁷ In examining MRA's *Response*, Section 503(b) of the Act requires that the Commission take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.⁸

10. Section 1.903(a) of the Rules states "[s]tatements in the Wireless Radio Services must be used and operated only in accordance with the rules applicable to their particular service as set forth in this title and with a valid authorization granted by the Commission under the provisions of this part..."

⁴ The MRA representative informed the agents that the gain of the station's antenna was 5 dB, and the cable loss was 1 dB. These numbers, along with the transmitter power output reading observed by the agent's wattmeter, were used in the calculation of the ERP.

⁵ 47 U.S.C. § 503(b).

⁶ 47 C.F.R. § 1.80.

⁷ 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

⁸ 47 U.S.C. § 503(b)(2)(E).

The WPPF233 license limits the ERP on 150.8825 MHz to 9 watts. On October 11, 2006, October 16, 2006, and October 17, 2006, Los Angeles agents measured the WPPF233 signal level as -57 dBm. During the inspection of WPPF233 on October 17, 2006, the agents calculated that this signal level was equivalent to the station operating with 184 watts, a power much greater than the limit listed on the WPPF233 license. After the inspection, MRA continued to operate WPPF233 at 15 watts (pending the installation of an attenuator).

11. In its *Response*, MRA does not dispute the measurements made by the Los Angeles agents, nor does MRA dispute the Los Angeles Office's finding that the overpower operation of WPPF233 continued for several days. MRA states that when it was constructing station WPPF233, it inadvertently selected the wrong equipment from its inventory and had "MRA realized at that time what particular equipment was being installed for station WPPF233, MRA would have selected different equipment that operates at 9 watts ERP." Further, MRA argues that it fully cooperated with the Los Angeles agents regarding the inspection of the station and took immediate action to lower the station's transmitter power without being asked to do so, once it was made aware that the station was operating on the wrong ERP. We find that neither MRA's inadvertent selection of equipment nor its cooperation with the Los Angeles Office mitigate its liability in this case. Licensees are required to comply with the terms of their licenses,⁹ and are expected to correct errors when they are brought to the licensee's attention.¹⁰

12. MRA also argues that when it reduced its ERP to 15 watts, it eliminated the co-channel interference, and "had that not been the case and had MRA known that the FCC considered the delay to be of any concern whatsoever MRA would have taken the station dark on October 17, 2007, and returned that same day with the attenuator." We find no merit to this argument. It is well established that absence of public harm is not considered a mitigating factor of a rule violation.¹¹ Consequently, the fact that WPPF233 ceased to cause interference after it reduced its ERP to 15 watts is irrelevant, as MRA continued to operate the station above the 9 watt ERP authorized on the WPPF233 license. The *NAL* issued by the Los Angeles Office found that MRA apparently violated Section 1.903(a) of the Rules because MRA operated at an ERP above the limit stated on its license. MRA was not found apparently liable for causing interference. Once MRA was alerted that it was operating WPPF233 at an unauthorized ERP, because of an investigation and inspection by the Los Angeles agents, MRA was expected to correct its violation. MRA's authorization for WPPF233 limited operation of that station to nine watts ERP, yet MRA installed and operated equipment incapable of operating at less than 15 watts, and then failed to immediately correct this violation once informed of the violation by the Los Angeles agents. Therefore, because it failed to do so, we find that its violation of Section 1.903(a) was willful.¹²

13. MRA also argues that the proposed forfeiture amount should be reduced because it has a history of compliance with the Commission's Rules. We have reviewed our records and we agree. Consequently, we reduce the forfeiture amount from \$4,000 to \$3,200.

14. We have examined the *Response* to the *NAL* pursuant to the statutory factors above, and in conjunction with the *Forfeiture Policy Statement*. As a result of our review, we conclude that MRA

⁹ 47 C.F.R. § 1.903(a).

¹⁰ The Commission has consistently held that a licensee is expected to correct errors when they are brought to the licensee's attention and that such correction is not grounds for a downward adjustment in the forfeiture. *AT&T Wireless Services, Inc.* 17 FCC Rcd 21866, 21871-76 (2002).

¹¹ *Lockheed Martin Corporation*, 22 FCC Rcd 4116, 4118 (EB 2007).

¹² MRA also argues that it actually corrected the violation on October 18, 2006, and would have informed the Los Angeles Office of this fact if MRA had been instructed to do so. While we accept MRA's statement that it corrected the violation on October 18, 2006, we find that MRA's violation was repeated because Los Angeles agents measured the WPPF233 ERP at levels greater than its authorization on several days prior to October 17, 2006.

willfully and repeatedly violated Section 1.903(a) of the Rules. Considering the entire record and the factors listed above, we find that reduction of the proposed forfeiture to \$3,200 is warranted.

IV. ORDERING CLAUSES

15. **ACCORDINGLY, IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended (“Act”), and Sections 0.111, 0.311 and 1.80(f)(4) of the Commission’s Rules, Mobile Relay Associates **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of \$3,200 for willfully and repeatedly violating Section 1.903(a) of the Rules.¹³

16. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this *Order*. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.¹⁴ Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank /LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911- 6106. Requests for full payment under an installment plan should be sent to: Associate Managing Director – Financial Operations, Room 1A625, 445 12th Street, S.W., Washington, D.C. 20554.¹⁵

17. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class Mail and Certified Mail Return Receipt Requested to Mobile Relay Associates, at its address of record.

FEDERAL COMMUNICATIONS COMMISSION

Rebecca L. Dorch
Regional Director, Western Region
Enforcement Bureau

¹³ 47 U.S.C. § 503(b), 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4), 1.903(a).

¹⁴ 47 U.S.C. § 504(a).

¹⁵ See 47 C.F.R. § 1.1914.